

BOARD OF APPEALS CASE NO. 5011

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BEFORE THE

APPLICANT: Daniel Hein

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ZONING HEARING EXAMINER

REQUEST: Variances to allow a detached garage and non-conforming dwelling within the front yard setback in a B2 District; 1 Edgewood Road, Edgewood

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/26/00 & 2/2/00

HEARING DATE: June 16, 2000

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Record: 1/28/00 & 2/4/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Daniel Hein, is requesting two variances:

- 1. To permit an existing non-conforming dwelling within the 30 foot front yard setback required by Section 267-39(B), Table XI, of the Harford County Code (2.5 feet proposed); and,**
- 2. To allow a proposed 40 foot by 60 foot detached garage within the 30 foot front yard setback required by Section 267-26(C)(4) and Section 267-39(B), Table XI, of the Code (14 feet proposed) in a B2 Community Business District.**

The subject parcel is located at 1 Edgewood Road, Edgewood, in the First Election District. It is more specifically identified as Parcel No. 406, in Grid 4A, on Tax Map 66. The parcel contains .97 acres, more or less, all of which is zoned B2 Community Business District. The property is owned by Henry R. and Trula Mae Hein, the Applicant's parents. They also own the lot adjacent to the front property line of the subject parcel. The existing non-conforming dwelling, which is the subject of the first variance request, is currently located across the front yard property line. The Applicant is in the process of revising the lot line so that the entire dwelling will sit within the boundaries of the subject parcel. The variance requests refer to the setbacks which would exist subsequent to the revision of the property line.

Case No. 5011 - Daniel Hein

The Applicant, Mr. Daniel Hein, appeared and testified that he resides on the subject property at 3 Edgewood Road in Edgewood. The property is currently owned by his parents, who also own the parcel adjacent to the front yard. Mr. Hein testified that he would like to build a large garage on the property for storage of boats and other vehicles which he maintains for the personal use of himself and his family. He indicated that he currently has four vehicles. Mr. Hein further noted that he would build the garage to match the exterior of the house and he would plant trees and other landscaping material around the periphery of the garage to make it as attractive as possible.

Mr. Robert R. Wilson, 2408 Rocks Road, Forest Hill, appeared and testified that he is a licensed land surveyor who was retained by the property owner to survey and prepare a site plan for the subject property. Mr. Wilson noted that the site plan reflects the fact that the property owners are relocating the front yard lot line to remove the encroachment by the existing dwelling. This was done based upon the recommendation of the Department of Planning and Zoning at the time that the application for the variances was filed. Mr. Wilson also noted that the buildable area on the property is restricted not only by the location of the existing dwelling, but also by an existing drainage ditch bordered by a 25 foot setback along its entire length. This setback will be retained even upon construction of the proposed garage if the variance is approved.

Mr. Anthony McClune , Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the property contains unique circumstances due to the location of the non-conforming dwelling (which will be located entirely within the subject parcel upon relocation of the lot line) and the existence of the drainage swale which requires a 25 foot setback. According to Mr. McClune, a 25 foot buffer around the swale is recommended. As a result of these conditions on the property and the configuration of the lot, the proposed location for the garage within the required front yard setback is the only feasible building site on the parcel. According to Mr. McClune, upon relocation of the front lot line, the existing dwelling would be located approximately 2.5 feet from the front property line and the proposed garage would be approximately 15 feet from the line.

Case No. 5011 - Daniel Hein

It was Mr. McClune's testimony that the building would be located away from adjacent neighbors, and the closest adjacent property owner also owns the subject property. Therefore any impact on adjacent property owners would be minimal. Mr. McClune did indicate that landscaping would be encouraged. Accordingly, it is the Department of Planning and Zoning's recommendation that the requested variances be approved.

Two witnesses appeared in opposition to the requests. Mr. Louis West, 6 Oak Street, Edgewood, testified that he is concerned about the effect of the proposed construction of the garage on his property value. He is also concerned about water runoff into the drainage ditch. He is opposed to the Applicant using the garage or the property for business purposes and is concerned about pollution which might be generated if a business were operated on the property. Ms. Laura Bullock, who owns but does not reside at 7 and 9 Edgewood Road, Edgewood, testified that she is opposed to the request because she is concerned that if the garage is full, the Applicant will store other vehicles outside of the garage on the property.

CONCLUSION:

The Applicant is requesting a variance from Section 267-39(B), Table XI, of the Harford County Code to permit an existing non-conforming dwelling to be located 27.5 feet within the required 30 foot front yard setback (2.5 feet from the property line) and a variance from Section 267-26(C)(4) of the Code to allow construction of a 40 foot by 60 foot detached garage within the required front yard setback. The Applicant is proposing a setback of 15 feet instead of the required 30 feet in a B2 Community Business District.

Regarding the variance request for the existing non-conforming dwelling, the uncontradicted evidence demonstrates that the circumstances and conditions relating to the subject property are unique. The dwelling was built across an existing lot line and can easily be located entirely within the subject parcel by moving the lot line several feet. This will remove the encroachment, but still necessitates a variance to allow the front yard setback to be reduced to 2.5 feet. The configuration of the lot, which has no frontage on any roadway, will allow the reduced setback to exist without any negative impact on adjacent properties, except perhaps for the adjacent property also owned by the Hein family. Denial of the requested variance would create hardship in that the dwelling would have to be moved or torn down, or lot lines would have to be significantly changed.

Regarding the request for a variance to Section 267-26(C)(4) to allow construction of a

Case No. 5011 - Daniel Hein

40 foot by 60 foot detached garage within the required 30 foot front yard setback, the evidence also demonstrates facts which support the request both in terms of uniqueness of the property, practical difficulty which would result from denial of the request, and lack of negative impact on adjacent properties. As set forth in the Staff Report from the Department of Planning and Zoning:

“The original dwelling existed prior to Zoning in 1957 and is non-conforming with a portion of the dwelling sitting across the property line. The Applicant is in the process of revising the lot so the entire dwelling is located on the subject lot as shown on the site plan. Even with the revision in the lot line, the dwelling would still be non-conforming. The lot is level and partially wooded. The lot contains a drainage ditch that cuts across the lot and collects water run-off from the surrounding commercial and residential developments. The natural constraints and the location of the existing improvements greatly reduce the building envelope of the property. The adjoining lots to the rear are single-family lots that front on Oak Street (most built prior to zoning in 1957). The lots separating the subject property from Edgewood Road are used for a mix of commercial and residential purposes. As the site plan and site photographs show, there is also access from a common right-of-way through the front parcel that is paved and will provide access to the garage. The front lot owned by Henry R. Hein is improved with an older two-story frame dwelling and garage that contains a repair shop. ...

The Applicant has proposed a location for the garage which will maintain a 25 foot setback from the existing “swale.” If the swale is determined to be waters of the U.S. by the Maryland Department of the Environment, a 25 foot buffer would be required. The only possible property affected by the reduced setback is also owned by the Applicant’s father. Therefore, the Department finds that the property is unique and that if approved, the variances will not have an adverse impact on the neighborhood or the intent of the Code.”

While there was testimony suggesting concerns about impact on water run-off into the swale and storage of vehicles on the property, there was no evidence to support the actual existence of these potential negative impacts. To the contrary, the Applicant testified that the garage would be used solely for the storage of his personal vehicles and that all vehicles would be stored inside the building. There was no evidence to support a finding that construction of the garage within the required setback would negatively impact the water run-off into the drainage swale.

It should be noted that Section 267-26(C)(4) provides:

“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages

Case No. 5011 - Daniel Hein

as specified in § 267-23C, Exceptions and modifications to minimum yard requirements.”

Section 267-23(C) then specifies exceptions to minimum yard requirements. Specifically, Section 267-23(C)(2)(d) addresses recessed garages which may be applicable or similar to the Applicant’s proposed garage:

“Recessed garage and parking pad. When dwelling units are designed with a garage or parking pad which is recessed by at least ten (10) feet from the front of the dwelling and access is provided to a local road, the minimum front yard setback may be reduced to fifteen (15) feet.”

Based upon the site plan provided by the Applicant, it does appear that the proposed garage is located at least 10 feet behind the front of the dwelling with access to the private paved right-of-way. Even if the Applicant’s garage does not meet the technical definition set forth in this Code section, the proposed variance would appear to meet the purpose and intent of the section which allows for a reduced front yard setback of 15 feet. Accordingly, the evidence supports the approval of the Applicant’s requests.

Therefore, it is the recommendation of the Hearing Examiner that the Applicant’s requests for two variances to the required front yard setbacks be approved, with the following conditions:

1. A revision of the property line shall be prepared and recorded in accord with the site plan submitted by the Applicant;
2. The Applicant shall submit a landscaping plan for review and approval by the Department of Planning and Zoning, with particular attention paid to screening the proposed garage from the adjacent properties located to the rear of the subject parcel, along Oak Street;
3. The Applicant shall obtain all necessary permits and inspections.

Date July 12, 2000

Valerie H. Twanmoh
Zoning Hearing Examiner